

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. 00-258
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction)	
of New Advanced Wireless Services, Including)	
Third Generation Wireless Systems)	
)	
Amendment of Section 2.106 of the Commission's)	ET Docket No. 95-18
Rules to Allocated Spectrum at 2 GHz for Use by)	
the Mobile-Satellite Service)	
)	
The Establishment of Policies and Service Rules)	IB Docket No. 99-81
for the Mobile-Satellite Service in the 2 GHz Band)	

To: The Commission

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following comments in response to the Commission's Further Notice of Proposed Rulemaking, FCC 01-224 (released August 20, 2001),¹ in the above-captioned proceedings regarding the use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services, including third generation and future generation of wireless systems (hereinafter advanced wireless services). These comments are limited to the issues raised in paragraph 34 of the *MO&O and FNPRM* regarding relocation of the 2 GHz private operational-fixed microwave ("POFS") incumbents.

¹*Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 6 Fed. Reg. 47618 (2001) ("*MO&O and FNPRM*").

I. Introduction.

APCO is the nation's oldest and largest public safety communications organization, with over 15,000 members involved in the management and operation of police, fire, emergency medical, forestry-conservation, highway maintenance, disaster relief and other public safety communications facilities. Many of APCO members are POFS licensees that use 2 GHz point-to-point microwave facilities as the backbone for critical public safety land mobile communications networks as well as to ensure redundancy in communications as a backup to their public safety land mobile communication networks. More than one-third of all the 2 GHz POFS links are licensed to public safety entities.

APCO has been an active participant in the above-captioned proceedings individually and through its membership in the Fixed Wireless Communications Coalition, commenting in various stages on the procedures for relocating fixed microwave incumbents. APCO has a continuing interest in the outcome of the relocation procedures for fixed microwave incumbents in these proceedings.

II. The Commission Should Adopt Similar Microwave Relocation Rules that Were Adopted in the Emerging Technologies Proceeding.

In the *MO&O* and *FNPRM*, the Commission proposes to allocate spectrum in the 1910-1930 MHz, 1990-2025 MHz, 2150-2160 MHz, 2165-220 MHz and 2390-2400 MHz band for new advanced wireless services. The Commission also seeks to supplement the record in the proceedings by: (a) providing new allocation options that were not addressed in the *Amendment of Part 2 of the Commission's Rules to Allocate spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services*, Notice of Proposed Rule Making and Order, 16 FCC Rcd 596 (2001); and (b) seeking comment on the benefits and costs of each new allocation option.

As an initial matter, APCO continues to support allowing POFS incumbents and advanced wireless service licensees to share the 2 GHz spectrum were technically feasible. APCO also recommends that POFS incumbents in the 2 GHz bands be allowed to maintain primary status in the frequency bands. Additionally, the process for relocating POFS incumbents should not begin unless and until an advanced wireless service provider, using the TSB-86 interference criteria (or some other comparable interference standard), notifies the POFS incumbent in writing that both operations cannot share the same spectrum, at which point the mandatory negotiation period should begin.² APCO believes that this approach strikes an equitable balance between POFS incumbents currently operating in the 2 GHz bands and advanced wireless service providers seeking new spectrum. Moreover, the Commission adopted this policy in the Second Report and Order and Second Memorandum Opinion and Order in ET Docket No. 95-18 for new MSS entrants.³

In this *MO&O and FNPRM*, the Commission specifically asks whether the advanced wireless services reallocation has any effect on fixed microwave users' relocation plans and procedures which were adopted in ET Docket No. 95-18 for incumbent fixed operations.⁴ APCO supports maintaining the same relocation procedures that the Commission adopted in the *2nd R&O and 2nd MO&O*. These procedures closely followed the POFS incumbent relocation

²APCO recognizes that some advanced wireless services may not be able to share spectrum with existing fixed microwave incumbents and band clearing will be necessary. However, until such services are introduced, POFS incumbents should be permanently grandfathered in the 2 GHz bands.

³15 FCC Rcd 12315, 12339-40 (2000) ("*2nd R&O and 2nd MO&O*").

⁴*MO&O and FNPRM* at ¶34.

procedures adopted in the Emerging Technologies proceeding,⁵ which have proven to be fair and effective in achieving the Commission's dual goals of clearing spectrum for emerging technology services, such as PCS, and relocating POFS incumbents to comparable spectrum. The reallocation options adopted in the *MO&O* portion of this proceeding for advanced wireless services should *not* impact the procedures for relocating POFS incumbents.

APCO urges the Commission to maintain the same mandatory negotiation period of three years for public safety licensees, which should begin when the advanced wireless service licensee notifies the POFS incumbent in writing of its desire to negotiate. Each POFS licensee should have the benefit of the full three-year negotiation period. Thus, the mandatory negotiation period should not begin with a date certain for *all* POFS incumbents, but rather, each mandatory negotiation period should begin only when a POFS incumbent receives written notice from an advanced wireless service licensee.

As APCO previously advocated in these proceedings, it opposes a sunset of the relocation rules. Nevertheless, if the Commission imposes a sunset period on the relocation rules for advanced wireless services, APCO recommends that the same sunset provisions adopted in the *2nd R&O* and *2nd MO&O* be applied to advanced wireless services (*i.e.*, a 10-year sunset period which begins when the *first* advanced wireless service licensee notifies the *first* POFS incumbent in writing of its desire to negotiate). APCO further recommends that the Commission issue a

⁵See *Redevelopment of Spectrum to Encourage Innovation in the Use of Telecommunications Technologies*, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 1994, *aff'd*, *APCO v. FCC*, 76 F.3d 395 (D.C. Cir. 1996).

Public Notice announcing the start of the sunset period to ensure that all fixed microwave incumbents are on notice of the commencement of the 10-year sunset period.⁶

Adoption of the above-mentioned recommendations would greatly facilitate the point-to-point microwave spectrum needs of public safety users. This need cannot be understated. As the demand to install new public safety communications systems (using 700 MHz frequency band for example) increases so does the need for more fixed microwave spectrum to link the new communications systems together. Moreover, the recent events in New York and near Washington, D.C. also underscore the need for redundant and backup public safety communications systems using point-to-point microwave links. As demonstrated in New York, many public safety agencies had transmitters located on top of the World Trade Center buildings, and a backup and redundant mode of public safety communications was necessary to coordinate the search, rescue and recovery of victims trapped in those buildings. The microwave infrastructure was essential to restoring and maintaining critical public safety communications. Fixed microwave relocation is not a simple undertaking because of the lack of alternative, comparable replacement spectrum. Thus, relocation rules similar to those previously adopted in the Emerging Technologies proceeding and the *2nd R&O* and *2nd MO&O* should be adopted for future advanced wireless services as well.

⁶Advanced wireless service licensees should provide the Commission with a copy of their written notification seeking mandatory negotiation with fixed microwave incumbents to facilitate the issuance of such Public Notice.

APCO urges the Commission to ensure that the backbone to critical public safety communications is not jeopardized by diminishing the fixed microwave relocation rules that have already proven to be effective and efficient. Accordingly, APCO requests the Commission to take action in accordance with the views expressed herein.

Respectfully submitted,

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